

SUBCHAPTER B—REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.

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AUTHORITY: Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(2), (b)(3)(B)); Sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110).

SOURCE: 52 FR 27957, July 24, 1987, unless otherwise noted.

§ 450.1 Scope of regulations; office responsible.

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)-(44)). Depository institutions exempt under part 401 of this chapter from the requirements of Subchapter A of this chapter must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Commissioner, Bureau of the Public Debt. Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

[52 FR 27957, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988]

§ 450.2 Definitions.

For purposes of this subchapter:

(a) *Appropriate regulatory agency* has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) A Federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(2) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) *Customer* includes, but is not limited to, the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o-4, 78o-5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o-5(a)(1)(B)) except as provided in § 450.4.

(c) *Depository institution* has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i)-(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95-369, 92 Stat. 607);

(d) *Fiduciary capacity* includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a Federal or state financial institution regulatory agency; and

(e) *Government securities* means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the

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Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C)).

[52 FR 27957, July 24, 1987, as amended at 55 FR 6604, Feb. 26, 1990]

§ 450.3 Exemption for holdings subject to fiduciary standards.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that (1) such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and (2) such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

§ 450.4 Custodial holdings of government securities.

Depository institutions that are subject to this part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a)(1) Except as otherwise provided in this section, a depository institution shall maintain possession or control of all government securities held for the account of customers by segregating such securities from the assets of the depository institution and keeping them free of any lien, charge or claim of any third party granted or created by such depository institution.

(2)(i) Where customer securities are maintained by a depository institution

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at another depository institution, including but not limited to a correspondent bank or a trust company (“custodian institution”), the depository institution shall be in compliance with paragraph (a)(1) of this section if:

(A) The depository institution notifies the custodian institution that such securities are customer securities;

(B) The custodian institution maintains such securities in an account that is designated for customers of the depository institution and that does not contain proprietary securities of the depository institution; and

(C) The depository institution instructs the custodian institution to maintain such securities free of any lien, charge, or claim of any kind in favor of such custodian institution or any persons claiming through it.

(ii) To the extent that a custodian institution holds securities that have been identified as customer securities by a depository institution in accordance with paragraph (a)(2)(i) of this section, the custodian institution shall treat such securities as customer securities separate from any other securities held for the account of the depository institution.

(3)(i) Where securities that a depository institution is required, pursuant to this part 450, to keep free of all liens, charges, or other claims (“customer securities”) are maintained by a depository institution at a Federal Reserve Bank, the depository institution shall be in compliance with paragraph (a)(1) of this section if any lien, charge or other claim of such Federal Reserve Bank or any person claiming through it against securities of the depository institution expressly excludes customer securities.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, a depository institution described in that paragraph shall be in compliance with paragraph (a)(1) of this section if a Federal Reserve Bank retains a lien on securities received during the day that are subsequently determined to be customer securities, *provided that*,

(A) On that day, the depository institution: